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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936 7

No. ~~552~~ 2

E. PAT KELLY, AS DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, ET AL., PETITIONERS,

vs.

STATE OF WASHINGTON ON THE RELATION OF FOSS COMPANY, INC., ALLMAN-HUBBLE TUGBOAT COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

PETITION FOR CERTIORARI FILED DECEMBER 2, 1936.

CERTIORARI GRANTED JANUARY 18, 1937.

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INDEX.

	Original	Print
Record from Superior Court of Thurston County	1	1
Petition for writ of prohibition	1	1
Order granting temporary writ, etc.	29	23
Order granting leave to appear as amicus curiæ	32	25
Order continuing writ of prohibition, etc.	33	25
Demurrer	34	26
Answer	36	27
Memo. opinion, Wright, J.	40	30
Judgment	41	30
Notice of appeal	43	32
Bond on appeal (omitted in printing)	45	
Clerk's certificate (omitted in printing)	48	
Statement of facts	49	33
Caption	52	33
Statement for plaintiff	52	34

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—8427-C

	Original	Print
Record from Superior Court of Thurston County—Continued.		
Statement of facts—Continued.		
Testimony of Wedell Foss	62	39
H. T. Shaver	85	55
H. W. Britts	89	58
Capt. Lindley Davis	93	60
H. T. Shaver (recalled)	102	67
Oscar W. Dam	105	69
Capt. Daniel Hutchins	121	80
Wm. M. Campbell	152	100
Frank Hubble	160	106
R. J. Ultican, Jr.	168	111
Frank Gilkey	169	112
R. F. Johnson	174	115
Wedell Foss (recalled)	177	118
Capt. Lindley Davis (recalled)	180	120
Capt. Howell Parker	181	121
Colloquy	185	124
Testimony of Kenneth Durham	192	128
Colloquy	193	129
Testimony of W. H. Sutter	195	130
Wedell Foss (recalled)	201	134
Capt. Howell Parker (recalled)	202	135
Motion to dismiss	205	137
Memo. opinion, Wright, J.	206	137
Statement of Mr. Robinson re proposed order	207	138
Order settling statement of facts	209	139
Appellants' abstract of record..(omitted in printing)	210	
Proceedings in Supreme Court of Washington	237	140
Opinion, Tolman, J.	237	140
Dissenting opinion, Blake, J.	244	146
Petitions for rehearing .....(omitted in printing)	250	
Order denying petitions for rehearing	294	151
Judgment	295	151
Appellants' reply brief	298	152
Notice of motion to recall remittitur	311	157
Motion for order recalling remittitur	312	158
Order granting motion to recall remittitur	313	159
Præcipe for transcript of record	314	159
Supplemental præcipe for record	317	161
Clerk's certificate .....(omitted in printing)	318	
Order allowing certiorari	319	162

[fol. 1] [File endorsement omitted]

IN SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THURSTON COUNTY

No. 15804

STATE OF WASHINGTON on the Relation of Foss COMPANY, INC., a Corporation; Allman-Hubble Tugboat Company, Inc., a Corporation; Bellingham Tug & Barge Co., Inc., a Corporation; Capital City Tug Co., Inc., a Corporation; Cascade Tug Boat Co., Inc., a Corporation; Crosby Sand & Gravel Company, Inc., a Corporation; James Draham, Foss Launch & Tug Co., Inc., a Corporation; O. D. Houchan, Johnson Tug & Barge Company, Inc., a Corporation; John W. and Allen McEwan, Doing Business ad McEwan Brothers, Merrill & Ring Lumber Co., Inc., a Corporation; Nemah River Towboat Company, Inc., a Corporation; Northwestern Logging Company, a Corporation; John Olson and Ed. M. Olson, doing Business as Olson Tug Boat Company, Olympia Towing Company, Inc., a Corporation; Pioneer Towing Co., Inc., a Corporation; Pioneer Transport Company, a Corporation; Puget Sound Tug & Barge Co., Inc., a Corporation; Schafer Bros. Lumber & Shingle Company, a Corporation; Shively Tow Boat Company, Inc., a Corporation; Delta V. Smyth, Sunset Tug & Barge Co., a Corporation; Tacoma Tug & Barge Co., Inc., a Corporation; Fred W. Thurber, Transit Towboat Company, Inc., a Corporation; R. J. Ultican Tugboat Co., Inc., a Corporation; Wagner Tug Boat Company, a Corporation; Clifford W. Waterman, doing business as Waterman Towing Co., Knappton Towboat Co., a Corporation; Shaver Transport Co., a Corporation, Plaintiffs,

vs.

E. PAT KELLY, as Director of the Department of Labor and Industries of the State of Washington; Jay Olinger, as Supervisor of the Safety Division of said Department, and Howell Parker, as Deputy of Said Director under the title Marine Inspector, Defendants

PETITION FOR WRIT OF PROHIBITION—Filed December 3, 1934

[fol. 2] Come now the plaintiffs and petition for a writ of prohibition against the defendants above named upon the

general ground that they are, in excess of all jurisdiction vested in them by law and without any authority of law, enforcing against these plaintiffs and their vessels certain provisions of Chapter 200 of the Washington Session Laws of 1907, all as more definitely shown in the following allegations::

I

Plaintiff Foss Company, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Washington and has paid its license fees last due. It owns and operates one steam and nine Diesel tugs. Said steam tug is more than forty feet in length. Of the Diesel tugs five exceed sixty-five feet in length when measured over the deck from end to end excluding sheer and four are of lesser length when so measured. Said Steam tug holds a certificate of enrollment issued by the Federal Government granting it the right and privilege to engage in the coasting trade of the United States and eight of said Diesel tugs hold certificates of registration issued by the Federal Government entitling them to the said right and privilege and to the additional right and privilege of engaging in the foreign trade. The remaining Diesel tug is licensed to engage in the coasting trade. The principal place of business of said corporation is in Seattle, Washington, and said vessels are, have been, and will be engaged in towing for hire in and upon the waters of Puget Sound and in and upon other adjacent and connecting navigable waters of the United States and in and upon ocean and foreign waters accessible therefrom, in foreign, interstate and intrastate commerce.

[fol. 3]

II

Plaintiff, Allman-Hubble Tugboat Company, Inc., is a corporation organized and existing under and by virtue of the laws of the state of Washington and has paid its annual license fee last due. It owns and operates one steam tug more than forty feet in length and five Diesel tugs, one of which is more than and four less than sixty-five feet in length measured from end to end over the deck excluding sheer. All of said vessels hold registration certificates issued by the Federal government granting them the right and privilege of engaging in both the coasting and foreign

trade of the United States. The principal place of business of said corporation is at Hoquiam, Washington, and said vessels have been, are, and will be used in towing for hire in and upon the waters of Grays Harbor and in and upon other navigable waters of the United States adjacent thereto or connecting therewith and in and upon ocean and foreign waters accessible therefrom in foreign, interstate and intrastate commerce.

III

Plaintiff Bellingham Tug & Barge Co., Inc., is a corporation organized and existing under and by virtue of the laws of the state of Washington and has paid its license fee last due. It owns and operates four steam tugs, each more than forty feet in length, and nine Diesel tugs, all but two of which are under sixty-five feet in length measured from end to end on the deck excluding sheer. Two of said Diesel tugs hold certificates of enrollment issued by the Federal government granting them the privilege of engaging in the coasting trade, and all other of said vessels, both steam and Diesel, hold certificates of registration issued by the Fed- [fol. 4] eral government entitling them to the same privilege and to the additional privilege of engaging in the foreign trade. The principal place of business of said corporation is in Bellingham, Washington, and said vessels have been, are, and will be used in towing for hire in and upon the waters of Puget Sound and in and upon other navigable waters of the United States adjacent thereto and connecting therewith and in and upon ocean and foreign waters accessible therefrom or foreign, interstate and intrastate commerce.

IV

Plaintiff Capital City Tug Co., Inc., is a corporation organized and existing under and by virtue of the laws of the state of Washington and has paid its annual license fee last due. It owns three Diesel tugs, all under sixty-five feet in length measured along the deck from end to end excluding sheer. Two of said tugs hold certificates of enrollment issued by the Federal government granting them the privilege of engaging in the coasting trade of the United States and the other holds a certificate of registration issued by the Federal government entitling it by law